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AUTHOR Horton, Janet Little
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ABSTRACT

The purpose of preemployment activities in a public school district is to obtain the person best qualified. This monograph discusses legal considerations in the preemployment process, with a focus on avoiding impermissible inquiries and the effect of the Americans with Disabilities Act. The key question to be asked when examining an application form and reviewing the interview process for impermissible inquiries is whether the inquiry is job-related. To avoid charges of discrimination and bias in hiring, all inquiries must be job-related and district screening criteria must be consistently and universally applied to all applicants. The emphasis in this monograph is on what is permissible and impermissible under federal laws and regulations, and as interpreted by the courts. Impermissible inquiries, presented under five categories, are those questions concerning marital status and the family situation; personal history that is not job-related; associational activities; irrelevant educational and work history data; and the existence, nature, or severity of a disability. Each of the five categories is examined separately. Problems in determining objective and subjective criteria are also discussed. Appendices contain samples of inappropriate and appropriate job application forms. (LMI)

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THE PREEMPLOYMENT PROCESS: AVOIDING IMPERMISSIBLE INQUIRIES AND THE EFFECT OF THE AMERICANS WITH DISABILITIES ACT

Janet Little Horton

ED 361 842

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INTRODUCTION

The purpose of preemployment activities in a public school district is to obtain the person best qualified and suited for a particular teaching or administrative position. The same is true for the nonprofessional staff who support the school operation. The purpose of an application form and an interview is to obtain as much *permissible* information as possible which is related to the job for which the applicant is applying. A precise, well-balanced application form will give a personal history, qualifications for the job, and job-related references which can be used to make more in-depth inquiries concerning the applicant in the interview process and in background and reference checks. A school district must avoid making an applicant feel as though the applicant has had his or her privacy invaded by many questions which do not relate to the available job. A job application form or an interview which contains many intrusive inquiries can lead to charges of discrimination in hiring.

The courts generally presume that any information requested in an application form or solicited in an interview is a factor upon which the school district will rely in selecting persons to hire. The key question to ask when examining an application form or reviewing the interview process for impermissible inquiries is whether the inquiry is job-related. Is the information really needed to judge an applicant's competence or qualifications for the job in question? To avoid charges of discrimination and bias in hiring, it is important that all inquiries are job-related and that the criteria upon which the school district relies in screening applicants are universally and consistently applied to all persons seeking the position.

Laws may vary from state to state regarding the permissibility of certain questions on an application form. The inquiries contained in an application form may also be affected by an order of a court governing the activities of a school district. Consequently, the emphasis in this monograph will be on what is permissible and impermissible under federal laws and regulations, and as interpreted by the courts. Any school district concerned about state laws or the interpretation of a court order affecting preemployment inquiries should review the applicable laws. Since this monograph is not legal advice but merely a guide, school districts should secure legal counsel on specific questions.

Inquiries That Should Be Avoided

In determining what inquiries are permissible on a job application form or in an interview, it is best to look first at various types of information which have been found by courts to be impermissible, or which are prohibited by federal law. These impermissible inquiries can be separated into five general categories:

1. Questions concerning marital status and the family situation;
2. Questions regarding personal history which are not job related;
3. Questions concerning associational activities;
4. Questions regarding irrelevant educational and work history data; and
5. Questions which inquire into the existence, nature or severity of a disability.

Each category will be examined separately. Attached as Appendix A is a reproduction of an actual job application form containing examples of impermissible inquiries in all five categories. A close examination of Appendix A will reveal a large number and variety of questions which should be avoided in an application form used by a school district.

Questions Concerning Marital Status and the Family Situation

Courts have been quick to find that preemployment inquiries about marital status, pregnancy, future childbearing plans, number and age of children, and availability of babysitters may result in discrimination against female applicants.[1] These questions have no bearing on a person's capabilities or competence for performing a particular job. If challenged in a lawsuit, a court may well find that a decision based on a job application containing such questions has been based on sex stereotyping. These questions become job-related and permissible to inquire into only if the person is hired and these factors begin to interfere with job performance.

Appendix A, page 27, contains questions concerning the number of dependents of the applicant, the number, age and sex of any children and questions regarding current marital status. On page 30 of Appendix

1. *See*, Jacobs v. Martin Sweets Co., 550 F.2d 364 (6th Cir.), *cert. denied*, 431 U.S. 917, 97 S. Ct. 2180 (1977); Andrews v. Drew Municipal Sch. Dist., 507 F.2d 611 (5th Cir. 1975), *cert. dismissed*, 425 U.S. 559, 96 S. Ct. 1752 (1976).

A, an inquiry is made regarding the number of times the applicant has been married. These questions are not related to the applicant's capabilities for performing the job of teacher, administrator, or non-professional staff. Page 30 of Appendix A also asks questions concerning the marital and financial status of the applicant's parents. There are questions concerning the occupation of the applicant's spouse and parents and the number and ages of the applicant's brothers and sisters. These questions are clearly not job-related. All such inquiries should be deleted from an application form used by a school district, and should not be inquired into during an interview.

Questions Regarding Personal History That are Not Job Related

Many sweeping questions concerning an applicant's personal history are often included in application forms because employers tend to think they get a better overall view of a person by the answers given to these questions. However, it is important to keep that key question in mind when examining a job application form: Is the inquiry job-related? Even if the inquiry is not job-related but is in an application form, the school district is generally presumed to rely on it and, consequently, is open to charges of discrimination and bias in hiring if the applicant believes that an employment decision has been based on something other than the applicant's qualifications for the job.

The application form in Appendix A contains numerous questions regarding personal history which are not job-related and which should be deleted from the application form. For example, questions concerning the applicant's age and sex, found on pages 27 and 28 of Appendix A, are impermissible since it is a violation of federal law to discriminate in hiring on the basis of age or sex, unless an employer can prove these factors are bona fide occupational qualifications.[2] A seemingly harmless question regarding date of birth is not advisable since it elicits information concerning the applicant's age, about which it would be impermissible to inquire outright.[3] A school district may legitimately be concerned with whether an applicant is an adult according to state law. This information can be solicited by inquiring as follows: "Are you above the age of 18?" The relevant age will differ according to state law.

Page 27 of Appendix A contains many inquiries concerning United States military service. Such inquiries are not related to job qualifica-

2. *See*, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 631, *et seq.*, and Title VII, 42 U.S.C. § 2000e, *et seq.*

3. See regulations implementing the ADEA, 29 C.F.R. § 1625.5.

tions for a teacher, administrator or non-professional staff. Courts have found that inquiries as to rank and type of discharge may have an adverse impact on minorities.[4] Information relevant to job qualifications may encompass special training in the military. However, it is more appropriate to seek this information under a category dealing with educational data or previous experience or training relevant to the position for which the person is applying.

The specific inquiries concerning school activities, hobbies, future employment plans, periodicals regularly read, and other various types of personal questions found on page 29 of Appendix A are clearly not related to job qualifications, and should be deleted from the application form and the interview process. Although such questions provide a greater variety of information concerning the applicant, they will not reveal anything concerning the applicant's competencies and capabilities for a job as a teacher, administrator or member of the non-professional staff. It is permissible to ask a general question whether any outside activity will interfere with job performance. Inquiries concerning outside business activities may be relevant to job qualifications since outside business activities could affect job performance. However, these inquiries are relevant only if the school district has a written policy concerning outside job activities or there are state laws which make this question relevant. If such a policy or state law does not exist, these inquiries may become relevant only after the applicant is hired if outside business activities interfere with the performance of the job.

With two exceptions, *all* of the inquiries on page 30 of Appendix A should be deleted. Questions concerning personal transportation, personal habits such as smoking and drinking and the applicant's current financial status are totally unrelated to qualifications for a job as teacher, administrator or member of the non-professional staff. This type of personal inquiry is very intrusive of the applicant's privacy and produces no information useful in making employment decisions. These types of questions could very easily lead an applicant to believe that an employment decision was made on something other than the person's qualifications for the job.

The first exception to deleting all of the inquiries on page 30 of Appendix A is the question: "Are you willing to take a complete physical examination if conditionally offered a position?" Title I of the Americans with Disabilities Act (ADA) prohibits preemployment inquiries of any type which inquire into the existence, nature or severity

4. *See* United States v. City of Chicago, 549 F.2d 415 (7th Cir.), *cert. denied*, 434 U.S. 875, 98 S. Ct. 225, *on remand*, 437 F. Supp. 256 (D.C. Ill.), *aff'd*, 567 F.2d 730 (7th Cir. 1977), *cert. denied* 436 U.S. 932, 98 S. Ct. 2832 (1978).

of a disability.[5] The ADA and its implementing regulations[6] allow an employer to require a medical examination of a job applicant who has been *offered a job* conditioned upon the results of the physical examination, if all persons conditionally offered the job must take a physical examination. An employer may not request an applicant to take a physical examination, but may only require the examination of one who has met all other job qualifications and has been conditionally offered employment.[7] The ADA and its effect on the preemployment process is discussed in detail beginning on page 8.

The second exception to the impermissible inquiries found on page 30 of Appendix A concerns prior arrests. In its present form on the application, the inquiry is into the applicant's arrest history and is impermissible.[8] It can be altered and made permissible by inquiring into convictions rather than merely arrests, because convictions have been found by some courts and federal agencies to be job-related. A school district should review the nature of the offense, the date of the offense, and the relationship between it and the position for which the applicant is applying. For example, conviction for theft or embezzlement might appropriately be considered if the applicant is applying for a bookkeeping position or similar job at a school district in which he or she will handle money. An appropriate inquiry along this line is: "Have you ever been convicted of a felony or any crime involving moral turpitude? If yes, please explain."

It is advisable to define moral turpitude so that the applicant will have a clear understanding of the types of crimes about which the school district is inquiring. The definition of moral turpitude varies from state to state, but it can generally be defined as an act of baseness, vileness or depravity in the private and social duties which a person owes another member of society, or society in general, and which is contrary to the accepted rule of right and duty between persons. Some examples of crimes involving moral turpitude are theft or attempted theft, murder, rape, swindling and indecency with a minor. A particular state may define the term differently in its laws and such definition should be used in the preemployment process by school districts in that state.

The inquiry above is broader than merely asking if the applicant has been convicted of a felony. In some states, a crime involving moral

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5. 42 U.S.C. § 12101 *et seq.*
6. 29 C.F.R. § 1630 *et seq.*
7. The ADA and its effect on the preemployment process is discussed in detail beginning on p. 8.
8. *See* Gregory v. Litton Sys., Inc., 316 F. Supp. 401 (C.D. Cal. 1970), *aff'd as modified*, 472 F.2d 631 (9th Cir. 1972).

turpitude may be a misdemeanor and not a felony. Under no circumstances should an applicant be precluded from completing an application form solely because of the response to this one question. If such an inquiry is included, a school district would be well advised to follow the inquiry with a statement such as: "Conviction of a crime is not an automatic bar to employment. The District will consider the nature of the offense, the date of the offense, and the relationship between the offense and the position for which the applicant is applying."

Questions Concerning Associational Activities

The United States Constitution grants persons the right to associate with whom they please. Inquiries regarding membership in organizations are usually not related to job qualifications; additionally, such inquiries may lead a rejected applicant to think that rejection was based on the applicant's affiliation with a particular group instead of his or her qualifications for the job. For example, page 29 of Appendix A asks for positions of leadership or responsibility in work or community activities. This question is designed to elicit impermissible information regarding group membership just as surely as the next inquiry requesting this organizational membership information outright. The name and character of an organization may reveal the race, religion, or the national origin of its members, inquiries which are also not permitted under interpretations of federal law.

Similarly, a request for information concerning foreign languages spoken by a person may also be an indirect way of inquiring into the applicant's race or national origin. If information concerning foreign language capability is actually related to the job for which the applicant is applying (such as a bilingual teacher), this information is better elicited in sections regarding educational data or previous work history relevant to the job which is available.

Page 30 of Appendix A asks various questions concerning religious affiliation and the frequency of attendance at church. Such questions may lead an applicant to believe that he or she was rejected because of association with a certain religious sect, or because he or she is not affiliated with a religion. Clearly, school districts may not make employment decisions based on a person's race, religion, organizational membership or national origin. All such questions should be deleted from a school district's application form.

Questions Regarding Irrelevant Educational and Work History Data

For professional personnel such as teachers and administrators, extensive questions regarding educational background and work history are usually job-related. School districts sometimes face charges of discrimination and bias in hiring because extensive inquiries regarding educational background and work history are asked of applicants applying for non-professional positions, such as members of the clerical staff, grounds and building maintenance, and transportation. A school district should limit such questions of those applying for non-professional positions to educational requirements and work-related information which are actually related to the job for which the applicant is applying. A school district should avoid requiring a level of achievement in formal education or special work experience that is not actually necessary for the successful performance of the job, or risk a finding by a court that such requirements are discriminatory.[9]

It is permissible to inquire into these areas, but a school district should be careful to use this information only as it relates to the specific job for which the person applies. School districts would be wise to consider separate application forms for those applying for non-professional positions so the second application form can be tailored to elicit educational background and work history information which are relevant to non-professional staff positions.

Questions That Inquire into the Existence, Nature or Severity of a Disability

The Americans with Disabilities Act is a statute which profoundly affects the preemployment process. Title I, the employment section of the ADA, and its implementing regulations[10] are modeled on section 504 of the Rehabilitation Act[11] and the interpretation of that law and its

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9. *See* Payne v. Travenol Lab., 565 F.2d 895 (5th Cir.), *cert. denied*, 439 U.S. 835, 99 S. Ct. 118 (1978); Crockett v. Green, 388 F.Supp. 912 (D.C. Wis.), *aff'd*, 534 F.2d 715 (7th Cir. 1975); Griggs v. Duke Power Co., 401 U.S. 424, 91 S. Ct. 849 (1971).

10. 42 U.S.C. § 12101 *et seq.*; 29 C.F.R. § 1630 *et seq.* In addition, the Equal Employment Opportunity Commission (EEOC) has issued a Technical Assistance Manual to help employers interpret and apply the ADA. This manual (TAM) is highly recommended to readers as a source for guidance in applying the ADA to specific cases. Copies may be obtained by writing to EEOC Office of Communications and Legislative Affairs, 1801 L. Street, N.W., Washington, D.C. 20507.

11. 29 U.S.C. § 704.

implementing regulations over the past years.[12] The ADA applies to private and public employers and is currently in effect for employers with 25 or more employees. On July 26, 1994, the ADA employment section will apply to employers with fifteen or more employees. A discussion of the basic tenents of the ADA is useful in understanding its impact on the preemployment process.

The ADA Protects a Broad Variety of Individuals

The ADA requires a covered employer to make reasonable accommodation for the known physical or mental limitations of a qualified applicant with a disability, unless the accommodation would cause an undue hardship on the operation of its business. A person with a disability is defined as an individual who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.[13] A physical impairment is defined as any physiological disorder, or condition, or cosmetic disfigurement or anatomical loss affecting one or more of the bodily systems such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine systems. A mental impairment is defined as any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.[14]

A major life activity includes such things as walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for one's self and working. These are the daily activities of life which an average person performs in a normal fashion.[15]

The term "substantially limits" means that an individual is unable to perform or is significantly limited in the ability to perform an activity compared to an average person in the general population.[16] One must consider the nature and severity of the disability, how long it will last or is expected to last, and its permanent or long-term impact, or expected impact. Therefore, a temporary medical condition, such as colds, flu,

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12. School districts have long been covered by section 504 of the Rehabilitation Act if they receive federal financial assistance. The requirements imposed by the ADA in the preemployment process are broader and more comprehensive. This monograph will focus on the requirements of the ADA in the preemployment process. Compliance with these requirements will result in compliance with section 504 requirements regarding the preemployment process.

13. 42 U.S.C. § 12102(2); 29 C.F.R. 1630.2(g).

14. 29 C.F.R. § 1630.2(h).

15. 29 C.F.R. § 1630.2(i).

16. 29 C.F.R. § 1630.2(j).

broken bones, pregnancy, etc., would not be considered physical or mental impairments under the ADA so long as recovery from these ailments is normal. If, however, a temporary illness ultimately results in a long-term or permanent impairment, the person may become covered by the ADA if that impairment substantially limits one or more major life activities.

The ADA not only protects individuals with a physical or mental impairment that substantially limits one or more major life activities, it also protects individuals with a record of a substantially limiting condition. If an applicant for employment has a history of a substantially limiting condition, or has been misclassified or misdiagnosed in the past as having a disability, then the applicant may be protected by the ADA if the prospective employer treats the applicant as if he or she were substantially limited in performing a major life activity based on such a record.[17] If an applicant is rejected from further consideration because such information comes to a prospective employer, or if the applicant is rejected after a post-offer medical exam turns up such a record but the applicant is currently able to perform the essential functions of the job in question, then such a rejection may be a violation of the ADA.

A person may also be covered by the ADA if the applicant is regarded as having a substantially limiting condition. This situation may occur in three different instances. First, the applicant may have an impairment which is not substantially limiting of any major life activities, but the applicant is treated by the prospective employer as being limited in a major life activity. For example, if a post-offer medical examination indicates that the applicant has high blood pressure that is controlled with medication, and the prospective employer rejects the person from employment and withdraws the conditional offer, a violation of the ADA may have occurred. Second, the applicant may have an impairment that is substantially limiting only because of the attitudes of others towards the condition. For example, a violation of the ADA would occur if a prospective employer's only basis for rejecting an otherwise qualified applicant is a disfiguring facial scar. Finally, an applicant may have no impairment at all, but may be regarded by a prospective employer as having a substantially limiting condition. For example, if a false rumor reaches a prospective employer that an applicant is HIV positive, and the applicant is otherwise qualified for the job but is rejected on this basis, it is likely that a violation of the ADA will occur.[18]

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17. 29 C.F.R. § 1630.2(k).
18. 29 C.F.R. § 1630.2(l).

In the past, individuals with certain disabilities have been totally excluded from consideration in certain types of positions. These blanket exclusions have usually been established because employers believe them necessary for health and safety reasons or because they had fears concerning higher medical insurance or worker's compensation costs, or higher rates of absenteeism. Such blanket exclusions will not survive scrutiny under the ADA. For example, a blanket exclusion from a specific job of all persons with epilepsy, diabetes or a heart condition would be improper under the ADA. Instead, the ADA requires an objective assessment of a particular individual's current ability to perform the job in question safely and effectively.

The ADA protects only the applicant who is a qualified individual with a disability. This is a two-part determination. First, the prospective employer must determine whether the individual meets the necessary prerequisites for the job such as education, work experience, training, skills, licenses, certificates, or other job-related requirements. If the individual meets these prerequisites, the next inquiry is whether the individual can perform the essential functions of the job in question with or without a reasonable accommodation.[19]

The ADA Excludes Certain Conditions from Coverage

Certain persons are excluded from coverage by the ADA. Excluded are persons who are currently illegally using drugs, including persons who use prescription drugs illegally, as well as those who use illegal drugs.[20] People who have successfully completed a rehabilitation program and no longer currently illegally use drugs, or those in the process of completing a rehabilitation program, are protected from discrimination on this basis by the ADA.[21] The state of being addicted is a protected disability under the ADA. However, the applicant for employment who is addicted to drugs or alcohol can be required to follow the same workplace rules regarding a ban on drugs and alcohol.[22]

There are numerous other conditions that are specifically excluded from coverage by the ADA. They include the following:

1. Transvestism, transsexualism, pedophilia, exhibitionism voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

2. Compulsive gambling, kleptomania, or pyromania;

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19. 29 C.F.R. § 1630.2(m).
20. 42 U.S.C. § 12114(a).
21. 42 U.S.C. § 12210(b).
22. 42 U.S.C. § 12114(c).

3. Psychoactive substance use disorders resulting from current illegal drug use; or
4. Homosexuality and bisexuality.[23]

The ADA Applies to All Aspects of the Preemployment Process and Employment Relationship

The ADA generally provides that no covered employer shall discriminate against a qualified individual with a disability because of the disability in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions and privileges of employment. All aspects of the preemployment process and the employment relationship are covered by the ADA.[24]

The ADA does not prohibit the employer from establishing job-related qualification standards. If a qualification standard or selection criteria screens out, or tends to screen out, an individual with a disability on the basis of the disability, the selection criteria must be job-related and consistent with business necessity, and performance of the criteria cannot be accomplished by reasonable accommodation.[25] "Job-related" means that the criteria is a legitimate measure or qualification for a specific job. Job-related criteria can apply to essential functions and marginal functions of a particular position. If a criteria excludes an individual with a disability because of the disability, and does not relate to an essential function of the job, then the criteria is not consistent with business necessity and the applicant cannot be rejected solely on this basis.

For example, if a job description for the superintendent's secretary states that the secretary must be able to take shorthand, but for years the superintendent's secretary has not taken shorthand but has transcribed tapes dictated by the superintendent, then the taking of shorthand, while it may be a job-related function, is a marginal, non-essential function of the job and it is not a business necessity. If an applicant is rejected for an inability to take shorthand, and the inability to take shorthand is related to a disability in the applicant, then the ADA has been violated because the applicant has been rejected on the basis of qualifications or standards that are related only to marginal job functions and are not consistent with business necessity.

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23. 42 U.S.C. § 12211.
24. 42 U.S.C. § 12112; 29 C.F.R. § 1630.4.
25. 42 U.S.C. § 12113(a).

School Districts Must be Able to Identify the Essential Functions of a Job

If an employment decision is challenged, it is extremely helpful for the employer to have a written job description. The job description should describe *all* the duties of the job, but it should also identify the functions of the job which are essential. An essential job function is defined as a fundamental job duty of the employment position which the applicant with the disability desires to hold. The definition does not include marginal functions of a position. An essential job function is one which is actually done as part of the job and, if someone else did the activity, it would fundamentally alter the job.[26]

A job function may be essential for several reasons. For example, the position itself may exist to perform the function. If a person is hired as a proofreader, accurate proofreading is an essential function of that job. A function may be essential because there are only a limited number of other employees to perform the function, or among whom the function can be distributed. For example, in a small office, a file clerk may also need to answer the telephone because all employees do a variety of tasks and there is no receptionist. Answering the telephone would be an essential function of the position. However, in a very large office where a receptionist is present to answer the telephone, it may not be an essential function of the file clerk's job to also answer the telephone. Finally, a person with special expertise or ability may be hired to perform a highly specialized function. If a person is hired to translate documents into Braille, then reading and knowledge of Braille would be an essential function of the position.[27]

Several Factors Help Define Essential Job Functions

Many factors will be considered in determining whether a job function is an essential or a marginal one. One factor to be examined is the employer's judgment with regard to whether the function is essential. The work experience of people who perform the job may also be evidence of its essential functions. Another factor is a written job description prepared before advertising or interviewing for a job which identifies the essential functions. The employer should focus on the purpose of the function and the result to be achieved, rather than on the manner of performance of the job. A disabled person may be able to achieve the same purpose and result by performing the job function in a way which is different than it has ever been performed before. Job descriptions pre-

26. 29 C.F.R. §§ 1630.2(n)(1) and (2).
27. 29 C.F.R. § 1630.2(n)(2).

pared after an alleged discriminatory act will not be considered evidence of the essential functions of the job.[28]

The amount of time spent by an employee performing a function is a factor to be considered, also. In some cases a function, although performed infrequently, is essential because there will be serious consequences if it is not performed. The terms of a collective bargaining agreement may also define the essential functions of a job.[29]

Once the essential functions of a job are identified, they can be used to set selection criteria and standards. Applicants can be asked to describe or demonstrate how they would perform the essential job functions with or without accommodation. This information can also be sent to doctors for use in post-offer medical examinations. In any challenge, the employer will have the burden of proof in a lawsuit to prove that a function is an essential function of the job.

If the disabled applicant meets all employment criteria and can perform the essential functions of the job without accommodation, the individual is a qualified individual with a disability. Failure to hire the disabled applicant may lead to a charge of discrimination under the ADA. If one or more essential functions of the job cannot be performed, then reasonable accommodation of the applicant must be considered.

An Employer Should be Knowledgeable about the ADA's Requirement to Reasonably Accommodate the Qualified Individual with a Disability

Another area prospective employers must be knowledgeable about in the preemployment process is the reasonable accommodation that is required by the ADA. If a disabled applicant who meets all employment criteria cannot perform an essential job function, then the employer must consider whether a reasonable accommodation can be made by which the disabled applicant can perform the essential job function. The employer may become aware of the need for an accommodation after a post-offer medical examination, or the disabled applicant may inform the employer in the preemployment process that an accommodation is necessary.

A reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity. Generally, the individual with a disability is obliged to request a reasonable accommodation. It is not the prospective employer's job to guess at whether an accommodation is needed and, if so, what

28. 29 C.F.R. § 1630.2(n)(3).
29. *Id.*

type. The disabled applicant may refuse an accommodation, but he or she may than be disqualified from the particular job in question if it can only be performed with that particular accommodation. An individual with a disability should be given the option of paying all or a portion of the cost of an accommodation if its cost would impose an undue hardship on the prospective employer.[30]

A reasonable accommodation is required in three instances. First, reasonable accommodation is required to ensure equal opportunity in the application process. The employment office or interview site may need to be made accessible to a disabled applicant so that he or she may have an equal opportunity to be considered for a job. Job information itself must be made accessible to disabled applicants, such as telephone numbers to be used by the hearing impaired, forms printed in large type, or recorded job application information for blind applicants. Prospective employers may have to assist those who are mentally challenged, or learning disabled with completing job application forms. Second, reasonable accommodation is required to enable a qualified individual with a disability to perform the essential functions of a job. Modifications or adjustments to the work environment or the way in which a job is performed may be required. Finally, a disabled employee is entitled to reasonable accommodation so as to be able to enjoy equal benefits and privileges of employment.[31]

There are certain basic principles which govern reasonable accommodation. A reasonable accommodation must be effective, although it does not have to ensure equal results or provide exactly the same benefits or privileges. The prospective employer must reasonably accommodate the disabled applicant only to reduce barriers to employment, not to fulfill some other reason. A reasonable accommodation is just that—reasonable. It does not have to be the best accommodation available so long as it is effective. Any personal equipment or devices used by the disabled person on and off the job are not required to be provided by the employer, unless the equipment is needed to meet job-related needs. An employer can always make modifications beyond those which would be considered "reasonable" under the ADA.[32]

Whether a reasonable accommodation is effective must be determined on a case-by-case basis. A reasonable accommodation that may be effective for one disabled person may not be effective for another. Each person is unique, and therefore the effect of the reasonable accommodation must be examined in light of each disabled individual's unique

30. EEOC Technical Assistance Manual I - § 3.1 (hereinafter TAM I - § ___).
31. TAM I - § 3.3.
32. TAM I - § 3.4.

needs. A reasonable accommodation must take into account the specific abilities and functional limitations of the particular applicant with a disability. It must also consider the specific functional requirements of the particular job for which the disabled applicant is applying. The accommodation must be reasonable and must enable the specific individual in question to do the job function.[13]

The prospective employer is responsible for notifying applicants of its obligation to provide reasonable accommodation to qualified individuals with a disability. This can be done through EEOC posters, application forms, vacancy notices, personnel manuals, oral communication, etc. It is important for prospective employers to remember that the term "reasonable accommodation" is not a magic phrase. The disabled applicant must only request some adjustment or change in the preemployment process or the work environment to trigger a consideration of reasonable accommodation. If the need for an accommodation is not obvious, or the employer does not believe it is needed, the prospective employer may request documentation from a doctor or other appropriate source to support the request.[14]

If an accommodation is needed, the prospective employer, in consultation with the disabled applicant, should identify potential accommodations and determine how effective each would be in overcoming barriers to performance of essential job functions. The prospective employer may also seek technical assistance from an outside source. There should be a dialogue between the prospective employer and the disabled applicant to determine what accommodation would be effective.[15]

If there are several means of reasonable accommodation, the prospective employer should consider the individual's preference. However, the employer is free to choose among effective accommodations and may choose one less expensive or easier to provide than the one the individual prefers. The individual may want to provide his or her own accommodation. If so, and as an employee, the disabled person later becomes unwilling or unable to provide the accommodation any longer, then the employer may have a duty to provide such reasonable accommodation at this later date.[16]

There are numerous examples of reasonable accommodation. Reasonable accommodation may include making facilities and job sites accessible and usable by the handicapped individual.[17] Job restructuring

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13. TAM I - § 3.5.
14. TAM I - § 3.6.
15. TAM I - § 3.8.
16. *Id.*
17. TAM I - § 3.10(1).

or modification may be a reasonable accommodation in some cases. However, the employer is not required to reallocate essential job functions to another employee.[38]

A modified work schedule, such as flexibility in work hours or work week, or a part-time work week, may be a reasonable accommodation if it does not cause undue hardship. The employer is not required to provide additional paid leave as an accommodation.[39]

Reassignment to a vacant position may be a reasonable accommodation for a disabled employee when an accommodation is not present in the employee's present job or when an accommodation would cause undue hardship. Reassignment applies only to employees. A job applicant does not have to be considered for different positions if he or she cannot perform the essential functions of the job for which the applicant has applied.[40]

Reasonable accommodation may also include the purchase of equipment or the modification of existing equipment. Tests, examinations and training programs may need to be modified in their administration in order to provide equal employment opportunities to individuals with disabilities. A vision impaired employee might be entitled to the provision of a reader as a reasonable accommodation. Likewise, a deaf employee might be reasonably accommodated by the provision of an interpreter on an as needed basis.[41]

An Accommodation Must be Provided Only If It Is Reasonable

If a disabled applicant cannot perform an essential job function but is otherwise qualified to hold the position, and an accommodation is identified by which the disabled applicant would be able to perform essential job functions, the next step for a prospective employer is to determine whether the accommodation is reasonable or not. In other words, does the accommodation create an undue hardship on the prospective employer? This determination is made on a case by case basis by looking at the individual resources and operation of the prospective employer.

An undue hardship is any action which is unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of the business.[42] Numerous factors are considered when

38. TAM I - § 3.10(2).
39. TAM I - §§ 3.10(3) and (4).
40. TAM I - § 3.10(5).
41. TAM I - §§ 3.10(6), (7), (8) and (9).
42. 29 C.F.R. § 1630.9(a); TAM I - § 3.9.

determining whether an accommodation creates an undue hardship. These include the nature and net cost of the accommodation to the prospective employer, the financial resources of the employer to deal with the accommodation, the number of employees and the effect of the accommodation on the expenses and resources of a facility. The impact of the accommodation on the operation of the facility of the employer should be considered, including the impact on the ability of other employees to do their jobs and on the facility's ability to conduct business. If an accommodation would cause low morale or disruption due to other employees' fears or prejudices, this will not be considered an undue hardship.[43]

The fact that the cost of an accommodation may be high in relation to the employee's wage or salary is not a factor to be considered. What matters are the resources available to the employer.[44]

A Qualified Individual with a Disability May be Excluded from a Job to Prevent a Direct Threat to Health or Safety

A prospective employer may require a disabled applicant not to pose a direct threat to the health or safety of the applicant or others in the workplace, if this standard is applied to all applicants for the position.[45] There are very specific, stringent standards which must be followed for an employer to establish that a disabled applicant poses a direct threat to health or safety.

First, there must be a significant risk or high probability of substantial harm. The specific risk must be defined according to the duration of the risk, the nature and severity of the harm, the likelihood the potential harm will occur, and the imminence of the potential harm. Finally, the risk must be current and one that is not speculative or remote.[46]

The assessment cannot be based on speculation that the disability will become worse, that the person will become unable to perform the job in the future, or that the individual may cause increased health insurance or worker's compensation costs or excessive absenteeism for the job site. Employers may not rely on generalized, out of date assumptions about risks associated with certain disabilities. The prospective employer must look at each applicant and determine on an objective medical basis whether the disability constitutes a direct threat. If there is a significant risk to health or safety, the employer must consider whether there is any

43. 42 U.S.C. § 12111(10); TAM I - § 3.9.
44. TAM I - § 3.9.
45. 42 U.S.C. § 12113(b); 29 C.F.R. § 1630.2(r).
46. 29 C.F.R. § 1630.2(r).

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reasonable accommodation which can lower the risk to an acceptable level, or eliminate it.[47]

The ADA Specifically Addresses the Preemployment Process

The ADA is quite specific about the types of inquiries which are impermissible in the preemployment process, whether asked on an application form, in an interview, or as part of a background or reference check. The following questions, or similar questions, may not be asked in the preemployment process:

1. Are you disabled? If so, describe the history of and type of disability.
2. Do you have any limitations on hearing, speech, or vision?
3. Have you been treated for any diseases?
4. Have you been hospitalized? Treated by a psychiatrist?
5. Have you been treated for drug or alcohol abuse?
6. Have you ever filed a worker's compensation claim?
7. How many sick days did you take last year?
8. Please list any conditions or diseases for which you have been treated in the past three years.
9. Are you taking any prescription drugs?
10. If the applicant has an obvious disability or volunteers information, the applicant may NOT be asked questions about the nature, severity or cause of the disability, prognosis, or whether special treatment or leave will be needed.
11. Former employers may not be asked about disabilities, illnesses or workers' compensation history.[48]

By banning such questions in the preemployment process, the ADA attempts to prevent prospective employers from screening out disabled applicants from the selection process before the employer has had an opportunity to actually assess the abilities of the disabled applicant. A prospective employer is not allowed to make assumptions based on written information about a disability. Rather, the prospective employer must now consider each applicant, disabled or not, on the basis of his or her actual capabilities.

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47. TAM I - § 4.5.
48. TAM I - § 5.5(b).

There are certain areas which may be inquired into in the pre-offer stage that deal with the applicant's ability to perform the functions of the job for which the applicant is applying. An applicant may be asked to describe or demonstrate how he or she would perform the functions of a particular job with or without an accommodation, if all applicants for that position are asked this question. A written job description is helpful because it identifies the functions of the job, both essential and marginal, which the applicant must perform.[49] If the applicant is not able to perform a job function which is identified as essential, then a reasonable accommodation must be considered, assuming the applicant meets all the other criteria for the job.

The applicant with a known or obvious disability that might interfere with a job function may be asked to describe or demonstrate how he or she would perform job functions with or without an accommodation even if other persons are not asked the same question.[50] For example, if an applicant confined to a wheelchair applies for a warehouse position to load and unload trucks and stock and handle supplies, a prospective employer might reasonably believe that the applicant's disability would interfere with such job functions. Therefore, the applicant could be asked to describe or demonstrate how he or she would perform these functions, even if other applicants are not asked the same question.

If the known or obvious disability of the applicant would not interfere with the performance of job functions, then the applicant may not be asked to describe or demonstrate how he or she would perform the job functions unless all other applicants for the position are asked the same questions.[51] For example, if a person with sight in only one eye applies for the same warehouse position of loading and unloading trucks and stocking and handling supplies, the prospective employer may not believe that the obvious disability would interfere with any job functions. Therefore, this applicant could be asked to describe or demonstrate how he or she would perform the functions of the job only if all applicants for the position are asked this question.

If a disabled applicant states that he or she can perform job functions only with an accommodation, it is permissible for the prospective employer to ask how job functions would be performed and with what accommodations. A prospective employer cannot reject the disabled applicant simply because a reasonable accommodation is needed to perform essential job functions.

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49. TAM I - § 5.5(d).
50. TAM I - § 5.5(f).
51. *Id.*

Background checks and reference checks may also not inquire into the existence, nature, or severity of a disability. However, former employers may be asked about job functions, tasks performed, quantity and quality of work, how job functions were performed, and compliance with attendance procedures. Former employers should not be questioned about use of sick leave by an applicant since this may reveal the existence, nature and/or severity of a disability. However, former employers may be asked about the applicant's adherence to work rules and attendance policies. If the applicant has a known disability and the applicant has requested an accommodation, a former employer may be asked about accommodations which were provided at that job site.[52]

If employment tests are required as part of the preemployment process, the prospective employer must be sure that the employment tests accurately reflect the skills to be tested. Reasonable accommodations must be made for disabled applicants in the test-taking procedures, including such things as more time to take a test, frequent breaks, an accessible test site, a written instead of oral test or vice versa, a tape recording of test answers, etc. Prospective employers must also assure that tests do not reflect impaired sensory, manual, or speaking skills, unless those skills are the factors the test is designed to measure. If a test screens out, or tends to screen out, an individual with a disability or a class of such individuals on the basis of a disability, it must be job-related and consistent with business necessity.[53]

The ADA and Medical Examinations

A major change made by the ADA in the preemployment process regards medical examinations. An employer may not make medical inquiries or conduct a medical examination until after a job offer has been made.[54] A job offer may be conditioned on the results of a medical examination or inquiry, but only if this is required for all entering employees in similar jobs.

Once a conditional offer of employment has been made, the prospective employer may obtain any information in a medical examination believed to be relevant to the applicant's ability to perform the job in question. If an individual is not hired after a post-offer medical examination, the reasons for not hiring the person must be job-related and consistent with business necessity.[55]

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52. TAM I - § 5.5(g).
53. TAM I - § 5.6.
54. 29 C.F.R. § 1630.13(a).
55. TAM I - § 6.4.

The law is crafted to lay bare a prospective employer's discrimination because of a disability. If a conditional job offer has been made to an applicant, the prospective employer has determined that the applicant meets all other standards and selection criteria for the job. If an offer is withdrawn because of information that is revealed in a medical examination, the employer must be able to prove that the applicant is not able to perform the essential functions of the job, and that no reasonable accommodation is available which would enable this individual to perform essential job functions, and that would not impose an undue hardship on the prospective employer. A post-offer medical examination may not disqualify an individual with a disability who is currently able to perform essential job functions because of speculation by the prospective employer that the disability may cause a risk of injury in the future or because of concerns about increased worker's compensation costs, higher insurance costs, higher absenteeism, or the need to provide a reasonable accommodation."

A doctor who conducts a medical examination should not make employment decisions or decide on a reasonable accommodation. The doctor's role in the preemployment process is to advise the employer about the current functional capabilities and limitations of the person in question. The doctor may also advise whether the applicant meets the employer's health and safety standards. The doctor should focus on what the person can and cannot do at the present time. To do so, a doctor must understand what the specific job functions and tasks are which the applicant will be asked to perform."

Medical information obtained through the preemployment process when an applicant has a medical examination after a conditional offer of employment must be kept on separate forms and kept in separate files. Only a limited number of persons have access to these confidential medical records. These persons include supervisors and managers who may be informed about necessary restrictions and accommodations for the person. First aid and safety personnel may also be informed if the disability might require emergency treatment, or if specific procedures are necessary in case of a fire or an evacuation of a building. Federal officials investigating compliance with the ADA and other federal laws also have access to this information. Finally, relevant information may be provided to worker's compensation offices and insurance companies."

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56. *Id.*
57. *Id.*
58. TAM I - 8.6.5.

INQUIRIES THAT ARE PERMISIBLE

Attached as Appendix B is a sample application form for an applicant applying for a professional staff position. The application begins by declaring the school district to be an equal opportunity employer which considers applicants for all positions without regard to race, color, religion, sex, national origin, age, marital or veteran status, or the presence of a non-job-related medical condition or disability. The inquiries on this application form are directed solely to eliciting information regarding the applicant's qualifications for the job. There are several questions regarding certification and the number of college semester hours taken in particular subjects. These are relevant since they help a school district determine the courses to which an applicant could be assigned. The section dealing with previous work history allows the applicant to include information concerning military, on-the-job or other types of training which would be relevant to the position for which he or she is applying.

The application form inquires about any criminal history which the applicant may have, including probated sentences and the use of deferred adjudication which may, in some states, have the effect of purging the applicant's criminal record of past convictions, or past pleas of guilty or *nolo contendere*. Under the system of deferred adjudication available in some states, an applicant could truthfully state he or she had never been *convicted* of any crime involving moral turpitude because successfully serving the probationary term assigned under deferred adjudication would automatically erase any prior conviction, guilty plea or plea of *nolo contendere*. Prior to including inquiries concerning probation or deferred adjudication on an application form, a school district should check its particular state laws to determine if such an inquiry is permissible. The application form clearly reassures the applicant that the existence of a criminal history is not an automatic bar to employment.

The inquiry concerning any relatives the applicant may have who are already employed by the school district is permissible and should be used only if there is a state law or school district policy regarding nepotism. The question should be limited to relatives within the degree of affinity or consanguinity prohibited or otherwise affected by the law or policy. Inquiries concerning the circumstances surrounding an applicant's exit from a previous school district are relevant since they may serve to uncover an applicant who was incompetent or engaged in improper conduct in a previous position and was terminated or was allowed to resign.

As previously discussed, it is not permissible to ask for information concerning the existence, nature or severity of a disability. The applica-

tion form contained in Appendix B inquires of the applicant if the applicant can perform the essential functions of the position for which he or she is applying. This is an appropriate way of inquiring into the applicant's ability to perform job-related functions. If a disability exists which would affect the applicant's ability to perform in the job, this information should be revealed in response to this question.

The application form ends with the applicant making a number of agreements. The applicant agrees that any misrepresentations or willful omissions on the application form are sufficient cause to disqualify the application, or subject an employee to termination if the misrepresentation or omission is discovered at a later time. The applicant also agrees to follow all rules and regulations of the school district then in force and effect or as they are modified in the future. This agreement may strengthen the school district's position in the future if it becomes necessary to terminate an employee for failure to follow policies and procedures.

Appendix C is a sample application form for the non-professional staff of a school district. It is arranged to elicit the same general information extracted from professional applicants and then elicit specific information from the applicant based on the type of job for which he or she is applying. The inquiries regarding educational history, work experience and references are permissible so long as the information elicited is used only to determine actual job qualifications. It must not be used to maintain a standard for hiring employees which is higher than the actual requirements of the job. If challenged, a school district must show that its criteria for a particular job are actually related to the job and are uniformly required of all who are hired in that particular position. The required degree of job-relatedness varies. Courts and federal agencies more closely scrutinize the criteria applied to low level or low skill jobs with regard to job relatedness. It is very important that the criteria used by school districts to employ people in low level or low skill non-professional jobs are actually related to the activities which will be performed in that job.

Subjective Versus Objective Criteria

In the context of preemployment inquiries, the pieces of information used to make an employment decision are generally categorized as either "subjective" or "objective". Subjective criteria, such as the applicant's attitude, are traits which call for a personal opinion on the part of the employer whereas objective criteria, such as the questions on an application form, are tangible pieces of information. Subjective criteria are

more worrisome due to the reliance on individual judgment rather than impersonal standards. The most prevalent use of subjective criteria in preemployment practices arises in interviewing job applicants. Although the value of personal interviews to both the employer and the applicant lies in the subjective nature of the procedure, that same factor is susceptible to bias against females, minorities, the disabled and older age groups. The question of bias is more likely to arise if a school district relies solely or primarily on the interviewer's evaluation in making an employment decision. In finding personnel evaluations to be discriminatory, the courts typically have described the subjective criteria utilized as vague, elusive, unstructured, undefined or poorly conceived.[59] The interviewing process is especially suspect where the interviewer does not base his or her evaluation on written guidelines or criteria specific to the job.

To avoid such problems, a school district should design its interviewing procedures to guard against interviewer bias and the use of criteria not related to the job. This is done by developing specific guidelines for all interviewers and assuring that such guidelines are consistently followed. In an effort to avoid the most common biases, some school districts utilize screening committees comprised of individuals of both sexes and with varied racial and ethnic backgrounds. Some of these committees function as interviewers while some serve as a final review committee to look at the results of the interview process to determine who should be offered a job. The interviewer's recommendation must be justifiable, which means that the recommendation must be based on the job requirements and the applicant's qualifications.

It is very beneficial for a school district to personally meet an applicant and get a better idea of the applicant's qualifications, personality, his or her drive, energy and enthusiasm, and how he or she will fit into the structure of the school. However, the interviewing process can turn into a very dangerous activity for a school district if the interviewer is not well trained. Subjective selection procedures are not discriminatory *per se*, but they must be scrutinized more closely because of their susceptibility to abuse. When the evaluation is subjective, as in the interviewing process, and the interviewer is not a member of the protected group or minority of the rejected applicant, the legitimacy and the non-discriminatory basis for the interviewer's articulated reason for his or her decision will be subject to particularly close scrutiny by the courts. Those involved in the interviewing process must remember that their questions must be job-related. The interview is not the place to ask all of the ques-

59. *See* United States v. City of Chicago, *see* citations *supra* note 4; EEOC v. Newspaper Prod. Co., 14 EPD ¶ 7717 (W.D. La. 1977); Rowe v. General Motors Corp., 457 F.2d 348 (5th Cir. 1972).

tions which could not be asked on the application form. Further, it is important that the school district secure or develop a set of written guidelines or criteria by which to judge each applicant in the interview situation.

CAUTION IS ADVISABLE

All school districts want an application form and an interview process which will lead to the selection of the best person for the job. It is possible for a school district in both its application form and interview process to gather a vast amount of information about the applicant so long as the school district keeps in mind the key question: Is the inquiry job-related? It is only human nature to be curious about a job applicant and want to know as much as possible about that person before hiring him or her. However, a school district which makes inquiries which have nothing to do with the job for which the person is applying runs the risk of a legal challenge.

Some of the deletions in the application form contained in Appendix A may seem overcautious, but the courts are quick to find discrimination in preemployment inquiries, particularly in application forms and the interview process. The applications contained in Appendices B and C admittedly do not elicit information which may be very interesting to a school district, such as the applicant's financial history, group memberships, and marital history. Interesting as these subjects may be, they are clearly not related to a person's qualifications for performing a job as teacher, administrator or member of a school district's non-professional staff. The application forms contained in Appendices B and C are directed solely toward eliciting information which will help a school district decide if the person applying for the job is the one best qualified to fill it. These forms are much more cautious but, with regard to applications and the interview process, caution avoids long and costly lawsuits challenging a school district's preemployment inquiries.

APPENDIX A

Example of Job Application Form That Should Not Be Used by a School District

Dead End Independent School District
Professional Staff Application Form

Date _____

PERSONAL DATA

Name _____
Full Name of Spouse _____
Person to Notify in Case of Accident _____ Telephone _____
Applying for Position as _____ When Available _____
Telephone _____ Social Security No. _____ Expected Salary _____
Present Address _____
Previous Address _____
Birthdate _____ Age _____ Sex _____
Present Employment Status _____
How Many Dependants _____
Numbers, Ages, Sex of Children _____
Single____ Engaged____ Divorced____ Widow(er)____ Married _____

REFERENCES

Names of three persons, former employers or personnel of the District who have known you for at least two years (no relatives) and name of bank with which you do business.

Name	Address	Business & Position	Telephone
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

U.S. MILITARY SERVICE

Veteran of U.S. Armed Forces: Yes_____ No_____
Reserve Status: _____ Draft Status: _____
Branch _____ Serial No. _____ Entering Date _____ Rank _____
Discharge Date_____ Discharge Rank_____ Type Discharge _____
In what theaters did you serve _____
Major Duties _____
Service Schools/Special Training _____
_____

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EMPLOYMENT DATA

Give complete record, starting with present or last employer. Insert additional sheet if necessary. Describe your experience in a concise manner.

Company Name	Address	Dates of Employment	Salary	Position/ Supervisor
1.	City_____ State _____	From _____ To_____	Start _____ Final_____	_____ _____

Experience _____

_____

_____

Reason for Leaving

_____

Age Upon Leaving _____

2.	City_____ State _____	From _____ To_____	Start _____ Final_____	_____ _____

Experience _____

_____

_____

Reason for Leaving

_____

Age Upon Leaving _____

3.	City_____ State _____	From _____ To_____	Start _____ Final_____	_____ _____

Experience _____

_____

_____

Reason for Leaving

_____

Age Upon Leaving _____

4.	City_____ State _____	From _____ To_____	Start _____ Final_____	_____ _____

Experience _____

_____

_____

Reason for Leaving

_____

Age Upon Leaving _____

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EDUCATIONAL DATA

	Name and Address Institution	From-To	Graduated	Degree	Area of Specialization
Grade School					
High School					
College					
Graduate School					
Trade, Business or Night School					
Apprenticeships					
Other					

MEMBERSHIPS, INTERESTS

School Activities - Honorary, Social, Sports, etc. _____

What positions of leadership or responsibility have you held in school, work, or elsewhere? _____

Of what civic, technical, trade, professional or other organizations are you a member? _____

Current Hobbies - self _____
Hobbies - wife or husband _____
Publications _____
What do you want to be doing 10 years from now? _____

What has been your most interesting work? _____
What made it interesting to you? _____

What periodicals do you read regularly? _____

Any outside business activities? Describe: _____

Foreign languages spoken _____

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FURTHER PERSONAL DATA

Place an X by the correct answer or fill in the blank as indicated:

How do you get to work? (Bus, personal auto, etc.) _____
Times Married? ___none ___one ___two ___three ___four ___five or more
When you were in school parents were? ____living together _____ divorced
_____separated _____only one or neither living
Monthly income of family when you were in school? _____under $200
____$201-400 ____$401-600 ____over $600
What church are you affiliated with? _____
Attend church? ___twice weekly ___weekly ___monthly ___yearly ___never
Occupation of spouse? _____
Occupation of parents? _____
Number and ages of brothers and sisters _____
_____
Arrests? (any charge, but this does not include getting a ticket) _____
_____ charges? _____
Have you ever been bonded? __yes __no. Ever refused a bond? __yes __no
Are you willing to take a complete physical examination if conditionally offered a position? _____
Health status: ____poor ____fair ____good ____superior
Height _____ weight _____ What illnesses have you had? _____
Have you ever drawn compensation for an on-the-job accident? (explain)
_____
What physical impairments do you have? _____
Do you smoke? _____pipe _____cigar _____cigarettes
Amount smoked daily? _____
Drink alcoholic beverages? _____daily _____weekly _____monthly _____yearly
_____rarely _____never
Days off work last year for illness? _____
Days in hospital in last 15 years? _____
Monthly income of spouse? _____
Cash value? (stocks, bonds, savings, etc.) _____
Total assets? (everything you completely own) _____
Amount of life insurance carried? _____ Medical insurance? ____yes _____no
Average monthly savings? _____
Residence? ____rent ____buying home ____own home ____live with relatives

The answers to the foregoing questions are true and correct to the best of my knowledge. I hereby give the District authorization to contact my past employers.

_____ _____
Signature Date

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APPENDIX B

Professional Staff Application
Progressive Independent School District*

Applicants are considered for all positions without regard to race, color, religion, sex, national origin, age, marital or veteran status, or the presence of a non-job-related medical condition or disability.

An Equal Opportunity Employer
(Please Print or Type)

Date _____

NAME _____
Last First Middle

ADDRESS _____
Number and Street

HOME TELEPHONE _____ BUSINESS TELEPHONE _____

SOCIAL SECURITY NUMBER _____

Are you over the age of 18? _____Yes _____No

POSITION DESIRED

	Field/Grade Level	No. Years Experience	Semester Hours
1st Choice			
2nd Choice			
3rd Choice			

Total Years Experience _____

Have you filed an application with our Schools before? _____

If yes, give date _____ and position applied for _____

Are you presently under contract with any school district for the next school year? _____

This application will remain on file for one year from the date of application only; it must be renewed if further consideration for a position is desired.

* The inquiries on this form should be used only after reviewing state laws and local policies and the text of this monograph which discusses permissible inquiries.

EDUCATION

SCHOOL	NAME	LOCATION CITY & STATE	DATES ATTENDED	DIPLOMA OR DEGREE	GRADE

An official college transcript is required before consideration can be given to your employment. It should include all courses completed at the time of the application.

CERTIFICATION

Kind of state certificate held _____

If certified in another state, indicate which state and type of certificate held _____

_____

ELEMENTARY CANDIDATES	SECONDARY CANDIDATES	ADMINISTRATIVE CANDIDATES
List endorsements to your state certificate below:	Certified teaching fields:	
_____	_____Sem. Hrs.___	_____Sem. Hrs.___
_____	_____Sem. Hrs.___	_____Sem. Hrs.___
_____	_____Sem. Hrs.___	_____Sem. Hrs.___

Area of Specialization:

_____

(Must have at least 18 hrs.)

IF APPLICANT FOR MIDDLE OR HIGH SCHOOL POSITION, FURNISH THE FOLLOWING INFORMATION:

Number of Semester Hours (Total) You Have Earned In:

_____ Business	_____ Foreign Lang.	_____ English
_____ Science	_____ Vocational	_____ Reading
_____ Speech	_____ Journalism	_____ Music
_____ Art	_____ Drama	_____ Physical Ed
_____ Industrial Arts	_____ Social Studies	
_____ Health	_____ Math	

IF APPLICANT FOR ELEMENTARY TEACHING POSITION, FURNISH THE FOLLOWING INFORMATION:

Number of Semester Hours You Have Earned In:

____ Elementary Ed.	____ Mathematics	____ Music	____ Health
____ Reading	____ Social Studies	____ Art	____ Other
____ English	____ Science	____ P.E.	_____

TEACHING/SCHOOL RELATED WORK EXPERIENCE

List most recent experience first. Include student teaching if less than 3 years experience. Use separate sheet if necessary. Indicate any skills, experiences or training (military, on-the-job, or other) you have received which will assist the District in placing you.

From	To	Number of Years	Name and Address of Employment	Principal/ or Immediate Supervisor	Grade or Subject Taught or Type of Job

PROFESSIONAL REFERENCES

(Those who have not taught or those who have taught for only one principal must list student teaching information.) Please list those whom we may contact even if they are the same as those on file with your college placement office.

TEACHERS WITHOUT EXPERIENCE COMPLETE THIS SECTION

	Name	ADDRESS Number	Street	City	State	Zip
College Supervisor of Student Teach.						
Coordinating Teacher-Pub. School						
Coordinating Teacher-Pub. School						

TEACHERS WITH EXPERIENCE COMPLETE THIS SECTION

Full Name of Reference	Position	SCHOOL ADDRESS Number	Street	City	State	Zip

If you have a relative who works for this District or who serves as a member of the Board of Trustees, please give the name and address and describe your relationship: _____

_____

College or University where your Placement File may be obtained: _____

_____

Is your file at your college or university up-to-date? _____ Have you requested that it be sent to us? _____

Moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a person owes another member of society or society in general and which is contrary to the accepted rule of right and duty between persons, including, but not limited to theft, attempted theft, murder, rape, swindling and indecency with a minor. Have you ever been convicted of a felony or any offense involving moral turpitude? _____yes _____no

If yes, please explain. _____

_____

Have you ever been convicted of a felony or any offense involving moral turpitude and received probation? _____yes _____no

If yes, please explain. _____

_____

Has any court ever received a plea of guilty or a plea of nolo contendre from you for any offense involving moral turpitude, deferred further proceedings without entering a finding of guilty and placed you on probation? _____yes _____no

If yes, please explain. _____

_____

Conviction of a crime is not an automatic bar to employment. The district will consider the nature of the offense, the date of the offense, and the relationship between the offense and the position for which you are applying.

Why do you desire to leave your present position, or why did you leave your last position? (Questions do not apply to those graduating this year.) _____

_____

Have you ever been involuntarily terminated or asked to resign from the employment of another school district? _____yes _____no

If yes, please give the name of the district, the date and the reasons for the termination or request for resignation. _____

_____

Are you aware of any reason you would not be able to perform the duties required of the position for which you are making an application?

_____yes _____no

If yes, please explain. _____

_____

List any additional information you think would be helpful concerning your knowledge, skills and experience related to the job for which you are applying.

_____

_____

_____

_____

Briefly state what you feel you can contribute as an employee for the Progressive Independent School District in the position for which you are applying.

_____

_____

_____

_____

AGREEMENT

I hereby certify that the above information to the best of my knowledge is true, accurate, and complete. Any misrepresentation or willful omissions of fact shall be sufficient cause for disqualification of this application or termination of employment. Furthermore, it is understood that this application and records become the property of the District which reserves the right to accept or reject it. I further agree to observe all rules, regulations, and policies of the District now in force and effect or as they may change during my employment, if I am employed by the District.

_____

Signature of Applicant

I hereby authorize the District to conduct work history, personal reference or police record inquiries to determine my acceptability for employment.

_____

Signature of Applicant

APPENDIX C

Employment Application
Progressive Independent School District*

Applicants are considered for all positions without regard to race, color, religion, sex, national origin, age, marital or veteran status, or the presence of a non-job-related medical condition or disability.

An Equal Opportunity Employer
(Please Print or Type)

Date _____

NAME _____ _____ _____
Last First Middle

ADDRESS _____
Number and Street

HOME TELEPHONE _____ BUSINESS TELEPHONE _____

SOCIAL SECURITY NUMBER _____

Are you over the age of 18? _____Yes _____No

SPECIFIC POSITION(S) APPLIED FOR:

( ) Secretarial/Clerical ( ) Educational Classroom Aide
( ) Substitute Teacher ( ) Ancillary

Have you filed an application with our Schools before? _____

If yes, give date _____ and position applied for _____

This application will remain on file for one year from the date of application only; it must be renewed if further consideration for a position is desired.

* The inquiries on this form should be used only after reviewing state laws and local policies and the text of this monograph which discusses permissible inquiries.

EDUCATION

SCHOOL	NAME	LOCATION CITY & STATE	DATES ATTENDED	DIPLOMA OR DEGREE
Last High School Attended				
*Colleges or Universities				
Business or Trade				
Other				

*If you did not receive a degree, indicate the number of college hours attained:_____ Please attach your college transcript with this application.

EXPERIENCE

List all Experience - Use Separate Sheet if Necessary

From	To	Number Of Years	Name and Address Of Employment	Immediate Supervisor	Type Of Job

REFERENCES

Full Name of Reference	Position	Address Number Street	City	State	Zip

If you have a relative who works for this District or who serves as a member of the Board of Trustees, please give the name and address and describe your relationship: _____

_____

Moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a person owes another member of society or society in general and which is contrary to the accepted rule of right and duty between persons, including, but not limited to theft, attempted theft, murder, rape, swindling and indecency with a minor. Have you ever been convicted of a felony or any offense involving moral turpitude? _____yes _____no

If yes, please explain. _____

_____

Have you ever been convicted of a felony or any offense involving moral turpitude and received probation? _____yes _____no

If yes, please explain. _____

_____

Has any court ever received a plea of guilty or a plea of *nolo contendre* from you for any offense involving moral turpitude, deferred further proceedings without entering a finding of guilty and placed you on probation? _____yes _____no

If yes, please explain. _____

_____

Conviction of a crime is not an automatic bar to employment. The district will consider the nature of the offense, the date of the offense, and the relationship between the offense and the position for which you are applying.

Why do you desire to leave your present position, or why did you leave your last position? _____

_____

Have you ever been involuntarily terminated or asked to resign from the employment of another school district? _____yes _____no

If yes, please give the name of the district, the date and the reason for the termination or request for resignation. _____

_____

Are you aware of any reason you would not be able to perform the duties required of the position for which you are making an application? _____yes _____no If yes, please explain. _____

_____

FOR SUBSTITUTE TEACHER OR EDUCATIONAL CLASSROOM AIDE APPLICANTS:

Type of State Certificate held: ( ) Provisional ( ) Professional ( ) None

If certified in another state, indicate which state and type of certificate held: ____

If you do not have a valid state certificate, what do you lack? _____

_____

Grade or subject in which you did student teaching: _____

Where did you do student teaching: _____

ELEMENTARY CANDIDATES List endorsements to your state certificate below	SECONDARY CANDIDATES Certified teaching fields	
_____	_____	Sem. hrs.____
_____	_____	Sem. hrs.____
_____	_____	Sem. hrs.____
_____	_____	Sem. hrs.____

Area of Specialization: _____
(Must have at least 18 semester hours)

FOR ANCILLARY APPLICANTS:

Position for Which Applying:

____ Custodian	____ Carpenter	_____ Lunchroom
____ Yard Crew	____ Painter	_____ Bus Driver
____ Mechanic	____ Air Conditioning Technician	_____ Other (Specify) _____

FOR SECRETARIAL/CLERICAL APPLICANTS & SUBSTITUTE SECRETARIAL/CLERICAL APPLICANTS:

Do you type?_____ No. of Years Experience _____
(yes or no)

How many words per minute do you type? _____

Do you operate a printing calculator?_____ Years of Experience _____
(yes or no)

Can you take shorthand?_____ No. of Years Experience _____
(yes or no)
Number of words per minute _____

Please list below any additional office machines with which you have had previous experience:

TYPE MACHINE	NUMBER OF YEARS EXPERIENCE
_____	_____
_____	_____
_____	_____
_____	_____

FOR ALL APPLICANTS

List any additional information you think would be helpful concerning your knowledge, skills and experience related to the job for which you are applying.

_____

_____

_____

_____

Briefly state what you feel you can contribute as an employee for the Progressive Independent School District in the position for which you are applying.

_____

_____

_____

_____

AGREEMENT

I hereby certify that the above information to the best of my knowledge is true, accurate, and complete. Any misrepresentation or willful omissions of fact shall be sufficient cause for disqualification of this application or termination of employment. Furthermore, it is understood that this application and records become the property of the District which reserves the right to accept or reject it. I further agree to observe all rules, regulations, and policies of the District now in force and effect or as they may change during my employment, if I am employed by the District.

_____

Signature of Applicant

I hereby authorize the District to conduct work history, personal reference or police record inquiries to determine my acceptability for employment.

_____

Signature of Applicant